

**PLACER COUNTY SUPERIOR COURT  
CIVIL LAW AND MOTION TENTATIVE RULINGS  
FRIDAY, JULY 31, 2020, AT 8:30 A.M.**

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These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, July 31, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, July 30, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

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Except as otherwise noted, these tentative rulings are issued by the **HONORABLE MICHAEL W. JONES** and if oral argument is requested, it will be heard in **Department 3**, located at **101 Maple Street, Auburn California**.

**PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: [www.placer.courts.ca.gov](http://www.placer.courts.ca.gov).**

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**1. S-CV-0041099 Sierra Northwest Properties, LLC vs. Kila Tahoe, LLC et al**

This tentative ruling is issued by Commissioner Glenn M. Holley. If oral argument is requested, it shall be heard on **Tuesday, August 4, 2020, at 1:00 p.m. in Department 40.**

**Motion for Attorneys' Fees**

Kila Tahoe, LLC's ("Kila's") request for judicial notice is granted.

Kila moves for attorneys' fees pursuant to the terms of the settlement agreement between Kila and Sierra Northwest Properties, LLP ("SNP").

The parties' settlement agreement states:

11. **Attorneys' Fees.** In the event any Party to this Agreement brings any motion, suit, or other proceeding concerning the interpretation or enforcement of this Agreement, the prevailing party (as determined by the court before which such motion, suit, or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to recover attorneys' fees, expenses and costs of investigation as actually

incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings).

SNP previously brought a motion to enforce the parties' settlement agreement under Code of Civil Procedure section 664.6. The court issued a ruling granting SNP's motion, finding that the parties' settlement agreement should be modified in part. Kila subsequently moved to set aside and vacate the judgment, and enter another and different judgment. On February 25, 2020, the court issued a ruling granting Kila's motion to set aside and vacate the judgment. Kila was directed to prepare a proposed modified ruling with respect to SNP's prior motion to enforce, which denied the motion, and a proposed judgment thereon. In this motion, Kila seeks its attorneys' fees pursuant to the terms of the parties' settlement agreement, as the prevailing party on the motion to set aside and vacate. As set forth in its reply brief, Kila requests fees incurred between July 2019, when it first incurred fees relating to SNP's motion to enforce, and February 25, 2020, when the court's ruling on Kila's motion to set aside and vacate was issued, in the total amount of \$108,197.50.

In light of the language in the parties' settlement agreement, the court may award fees relating to a motion seeking enforcement or interpretation of the agreement. *In re Mission Ins. Co.* (1995) 41 Cal.App.4th 828, 840. In this case, Kila is the prevailing party on its motion to set aside and vacate, which had the effect of reversing the court's prior ruling to grant SNP's motion to enforce. Thus, the court finds that Kila is entitled to an award of reasonable attorneys' fees relating to the motion to set aside and vacate, and the underlying motion to enforce.

Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. Kila requests attorneys' fees based on requested billing rates ranging between \$265-\$550 per hour. "The reasonable hourly rate is that prevailing in the community for similar work." *Id.* at 1095. "The lodestar figure is calculated using the reasonable rate for comparable legal services in the local community for noncontingent litigation of the same type, multiplied by the reasonable number of hours spent on the case." *Nichols v. City of Taft* (2007) 155 Cal.App.4th 1233, 1242-1243. In the court's experience, the billing rates requested are not commensurate with prevailing billing rates in this local community or region for cases of this type. Considering the circumstances of the present case, and reasonable billing rates prevailing in this community, the court finds that a reasonable billing rate for attorney Michael Brown is \$400 per hour. The court finds that the reasonable billing rate for attorney Greg Gatto is \$375 per hour. The court finds that the reasonable billing rate for attorney Jonathan Miles is \$350 per hour. The court finds that the reasonable billing rate for attorney Nicholas Karkazis is \$300 per hour. The court finds that the reasonable billing rate for Lauren Neuhaus is \$275 per hour. The court finds that the reasonable billing rate for the firm's paralegal is \$130 per hour.

The court next turns to the question of whether the hours expended by attorneys and staff were reasonable. To that end the court has reviewed the motion papers, counsel's

declarations, and the entire file in this action. From a careful review of the billing statements attached to the declarations of counsel, the court generally observes instances of duplicative billing, billing for tasks that do not appear reasonably necessary to the subject motions, and unreasonable amounts of time spent on various tasks. For example, Kila seeks fees for over 30 hours spent in drafting objections to SNP's proposed judgment. Kila also seeks fees for over 100 hours spent for research, drafting, and associated tasks related to the motion to set aside and vacate, and companion motion for new trial. The court finds these requests to be excessive in light of the factual and legal issues presented in the motions. The court also notes numerous entries for work where redactions make it impossible to determine what work was being performed, whether such work related to the motion to vacate or motion to enforce, and whether the time spent was reasonable in light of the task at hand.

Based on a careful review of the billing records, the declarations of counsel, the moving and opposing papers on this motion, and the entire file in this action, the court awards fees as follows:

- \$1,375 for fees incurred in connection with SNP's motion to enforce
- \$2,800 for additional work performed by attorney Michael Brown relating to the hearing on the motion to enforce
- \$3,750 for fees incurred in connection with Kila's objections to SNP's proposed judgment (including 5 hours billed by attorney Jonathan Miles and 5 hours billed by Michael Brown)
- \$20,175 for fees incurred in connection with Kila's motion to set aside and vacate (including 30 hours billed by attorney Nicholas Karkazis, 20 hours billed by attorney Michael Brown, 5 hours billed by attorney Greg Gatto, and 10 hours billed by the firm's paralegal)

Based on the foregoing, Kila is awarded attorneys' fees in the total amount of \$28,100.

#### Motion to Strike Costs

Kila Tahoe, LLC's ("Kila's") request for judicial notice is granted.

Sierra Northwest Properties, LLP ("SNP") moves to strike the memorandum of costs filed by Kila on April 30, 2020. Pursuant to the memorandum of costs, Kila seeks costs totaling \$3,555.05, including filings fees of \$80, First Legal fees of \$1,432.05, and computerized research costs in the amount of \$2,043.

The parties' settlement agreement states:

11. **Attorneys' Fees.** In the event any Party to this Agreement brings any motion, suit, or other proceeding concerning the interpretation or enforcement of this Agreement, the prevailing party (as determined by the court before which such motion, suit, or proceeding is commenced) shall, in addition to such other relief as may be awarded, be entitled to

recover attorneys' fees, expenses and costs of investigation as actually incurred (including, without limitation, attorneys' fees, expenses and costs of investigation incurred in appellate proceedings).

As noted in connection with Kila's motion for attorneys' fees, Kila is the prevailing party on its motion to set aside and vacate, which had the effect of reversing the court's prior ruling to grant SNP's motion to enforce. The court finds that Kila is entitled to costs pursuant to the plain language of the parties' settlement agreement. *See In re Mission Ins. Co.* (1995) 41 Cal.App.4th 828, 840.

The court finds that a sufficient showing has been made to support costs relating to filing fees and First Legal charges for the filing of documents. However, neither the memorandum of costs nor Kila's opposition provides information to support the requested cost for computerized research beyond the amount. Thus, despite the language of the settlement agreement which permits the recovery of costs of investigation, the court cannot conclude that such costs were reasonably incurred in connection with the subject motions.

Based on the foregoing, the motion to strike is granted in part as to computerized research costs in the amount of \$2,043. The motion is otherwise denied. Kila is awarded costs in the total amount of \$1,512.05.

**2. S-CV-0043049 Am. Builders & Contr.'s Supply vs. Superior Pres. & Constr.**

Plaintiff's motion for terminating sanctions is continued to August 7, 2020, at 8:30 a.m. in Department 3.

**3. S-CV-0043813 Ambrose, Steven vs. City of Lincoln et al**

This tentative ruling is issued by Commissioner Glenn M. Holley. If oral argument is requested it shall be heard on **Thursday, August 6, at 1:00 p.m. in Department 40.**

City of Lincoln's Motion for Attorneys' Fees

Rulings on Requests for Judicial Notice and Objections to Evidence

Plaintiff's request for judicial notice is granted.

Plaintiff's objection to the declaration of Michael Watters is overruled.

Ruling on Motion

Defendant City of Lincoln's ("City's") motion for attorneys' fees and costs is granted as set forth below.

The City prevailed on its special motion to strike pursuant to Code of Civil Procedure section 425.16, and is entitled to seek recovery of attorneys' fees incurred in bringing the motion. Code Civ. Proc. § 425.16(c)(1). The purpose of the fee-shifting provision is to discourage meritless lawsuits and also to provide financial relief to the victims of lawsuits which are subject to the anti-SLAPP law. *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 627. Although the statute itself is ambiguous as to what "fees and costs" are recoverable, courts have held that only fees and costs incurred on the motion to strike are allowed, as opposed to fees incurred for the entire litigation. *Lafayette Morehouse, Inc. v. Chronicle Pub. Co.* (1995) 39 Cal.App.4th 1379, 1383; *S.B. Breach Properties v. Berti* (2006) 39 Cal.4th 374, 381. Only fees deemed by the court to be reasonable may be recovered. *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 362.

Fee setting typically begins with the "lodestar" – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. The lodestar approach is also appropriate in analyzing fee awards under Code of Civil Procedure section 425.16. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136. The City requests attorneys' fees of \$112,103, plus a 10% lodestar enhancement which results in a total fee request of \$123,313.30. The City also requests costs of \$1,493.43. The fees are based on requested billing rates of \$385 per hour for attorneys Melissa Culp and Ruben Escobedo, \$300 per hour for attorney Ladan Shelechi, \$120 per hour for paralegal Winston Segner, and \$450 per hour for City attorney Kristine Mollenkopf, who is also named as a defendant in the action.

"The reasonable hourly rate is that prevailing in the community for similar work." *PLCM Group v. Drexler, supra*, 22 Cal.4th at 1095. Based on its review of the declarations in support of the motion, the court finds the requested hourly rates for Melissa Culp, Ruben Escobedo, Ladan Shelechi and Winston Segner to be reasonable based on the reasonable hourly rate prevailing in the community for similar services.

With respect to work performed by Kristine Mollenkopf, the court declines to award fees. As noted, Ms. Mollenkopf is a defendant in this action, and she filed a separate anti-SLAPP motion as to plaintiff's claims which was substantially similar to the City's motion. The factual and legal issues presented in the two motions were intertwined, and Ms. Mollenkopf's declaration in support of the motion for fees does not address the differences between her actions as the City attorney, and her actions as a defendant. The work described by Ms. Mollenkopf is also duplicative of work performed by retained counsel. Finally, Ms. Mollenkopf admits that she did not keep time records, and she provides only generally described estimates of time based on her recollection of events which occurred several months ago. For all of these reasons, the request for fees for work performed by Ms. Mollenkopf is denied.

The court next turns to the question of whether the hours expended by attorneys and staff for Lynberg & Watkins were reasonable. To that end the court has reviewed the motion papers, counsel's declarations, and the entire file in this action. The court also

draws upon its experience in assessing fee motions following successful anti-SLAPP motions in other cases. Based upon this review, the court concludes that the total amount of fees requested by the City is not reasonable in amount. From a careful review of the billing statements attached to the declaration of Melissa Culp, the court generally observes instances of duplicative billing, billing for tasks that do not appear reasonably necessary to the conduct of the litigation, and unreasonable amounts of time spent on various tasks. As one example, the City requests significant fees for factual investigation by Ms. Culp, including investigation of documents and events occurring many years before the events at issue in this litigation. Counsel billed over 250 hours in connection with research, drafting, and associated tasks related to the City's motion. This includes over ten hours just to prepare for the hearing. Notwithstanding the City's success on the motion based on recent case law, the court finds the request for fees to be excessive. Counsel also seeks fees (set forth in Exhibit 5 to Ms. Culp's declaration) which are requested in the same amount in Ms. Mollenkopf's separate motion for fees.

In light of its experience in assessing motions of this type, as well as a careful review of the declarations of counsel and the entire file in this action, the court awards attorneys' fees based on 90 hours billed by Ms. Culp and Mr. Escobedo at the rate of \$385 per hour, 25 hours billed by Ms. Shelechi at the rate of \$300/hour, and 5 hours billed by Mr. Segner at the rate of \$120 per hour. The court also awards an additional \$4,620 for fees associated with the instant motion for fees. The court declines to award an enhancement as requested by the City. The City is awarded costs in the amount requested, \$1,493.43.

In summary, the City is awarded attorneys' fees in the total amount of \$47,370, and costs of \$1,493.43.

#### Kristine Mollenkopf's Motion for Attorneys' Fees

##### Rulings on Requests for Judicial Notice and Objections to Evidence

Plaintiff's request for judicial notice is granted.

Plaintiff's objection to the declaration of Michael Watters is overruled.

##### Ruling on Motion

Defendant Kristine Mollenkopf's ("Mollenkopf's") motion for attorneys' fees and costs is granted as set forth below.

Mollenkopf prevailed on her special motion to strike pursuant to Code of Civil Procedure section 425.16, and is entitled to seek recovery of attorneys' fees incurred in bringing the motion. Code Civ. Proc. § 425.16(c)(1). The purpose of the fee-shifting provision is to discourage meritless lawsuits and also to provide financial relief to the victims of lawsuits which are subject to the anti-SLAPP law. *City of Los Angeles v. Animal Defense League* (2006) 135 Cal.App.4th 606, 627. Although the statute itself is ambiguous as to what "fees and costs" are recoverable, courts have held that only fees

and costs incurred on the motion to strike are allowed, as opposed to fees incurred for the entire litigation. *Lafayette Morehouse, Inc. v. Chronicle Pub. Co.* (1995) 39 Cal.App.4th 1379, 1383; *S.B. Breach Properties v. Berti* (2006) 39 Cal.4th 374, 381. Only fees deemed by the court to be reasonable may be recovered. *Robertson v. Rodriguez* (1995) 36 Cal.App.4th 347, 362.

Fee setting typically begins with the “lodestar” – i.e., a touchstone figure based on the number of hours reasonably expended multiplied by the reasonable hourly rate. *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1097. The lodestar approach is also appropriate in analyzing fee awards under Code of Civil Procedure section 425.16. *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136. Mollenkopf requests attorneys’ fees of \$59,204. Mollenkopf also requests costs of \$1,205.71. The fees are based on requested billing rates of \$385 per hour for attorneys Melissa Culp and Ruben Escobedo, \$300 per hour for attorney Ladan Shelechi, and \$120 per hour for paralegal Winston Segner.

“The reasonable hourly rate is that prevailing in the community for similar work.” *PLCM Group v. Drexler, supra*, 22 Cal.4th at 1095. Based on its review of the declarations in support of the motion, the court finds the requested hourly rates for Melissa Culp, Ruben Escobedo, Ladan Shelechi and Winston Segner to be reasonable based on the reasonable hourly rate prevailing in the community for similar services.

The court next turns to the question of whether the hours expended by attorneys and staff for Lynberg & Watkins were reasonable. To that end the court has reviewed the motion papers, counsel’s declarations, and the entire file in this action. The court also draws upon its experience in assessing fee motions following successful anti-SLAPP motions in other cases. Based upon this review, the court concludes that the total amount of fees requested by Mollenkopf is not reasonable in amount. From a careful review of the billing statements attached to the declaration of Melissa Culp, the court generally observes instances of duplicative billing, billing for tasks that do not appear reasonably necessary to the conduct of the litigation, and unreasonable amounts of time spent on various tasks. As one example, Mollenkopf requests significant fees for factual investigation by Ms. Culp, including investigation of documents and events occurring many years before the events at issue in this litigation. Counsel billed over 150 hours in connection with research, drafting, and associated tasks related to Mollenkopf’s motion, a motion which overlaps with the City’s motion in many respects. This includes over ten hours just to prepare for the hearing. Notwithstanding the Mollenkopf’s success on the motion, the court finds the request for fees to be excessive. Counsel also seeks fees (set forth in Exhibit 5 to Ms. Culp’s declaration) which are requested in the same amount in the City’s separate motion for fees.

In light of its experience in assessing motions of this type, as well as a careful review of the declarations of counsel and the entire file in this action, the court awards attorneys’ fees based on 40 hours billed by Ms. Culp and Mr. Escobedo at the rate of \$385 per hour, 13 hours billed by Ms. Shelechi at the rate of \$300/hour, and 5 hours billed by Mr. Segner at the rate of \$120 per hour. The court also awards an additional \$2,310 for fees associated with the instant motion for fees. The court declines to award costs incurred to

order a copy of the ruling, and for the reporter's transcript, as these costs have already been awarded with respect to the City's motion for fees. Mollenkopf is awarded costs in the amount of \$414.21.

In summary, Mollenkopf is awarded attorneys' fees in the total amount of \$22,210, and costs of \$414.21.

**4. S-CV-0044135 Barrett Daffin Frappier Treder & Weiss vs. Simpson, Melody**

Plaintiff's motion for statutory discharge is continued to August 7, 2020, at 8:30 a.m. in Department 3.

**5. S-CV-0044209 Retail Polishing Management, LLC vs. Kennady, Timothy et al**

Plaintiff's motion to compel is continued to August 7, 2020, at 8:30 a.m. in Department 3.

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